

App. No. 09/560,269
Amendment dated August 31, 2005
Reply to final Office Action of July 14, 2005

REMARKS

Claims 1, 4-16, 19-31 and 34-45 are currently pending in this application. Claims 1, 4-16, 19-31 and 34-45 were rejected. Claims 1, 4, 12, 13, 16, 27-31 and 34-45 are amended. No new matter has been added. In view of the amendments and the following remarks, reconsideration and allowance of all pending claims are respectfully requested.

Rejections under 35 U.S.C. § 101

The Office Action rejected Claims 1 and 4-15 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The Office Action states that the method steps do not rely on any hardware that would provide tangible results. Applicant has amended Claims 1 and 12 to recite, "A computer-implemented method for collecting information relating to execution of an application, the method being executed on a computer ..." Thus, Claims 1 and 12, as amended, are each directed to statutory subject matter because the method steps rely on hardware that would produce tangible results. Furthermore, dependent Claims 4-11 and 13-15 are allowable for at least the same reasons that the base claims on which they rely are allowable, and notice to that effect is solicited.

The Office Action rejected Claims 16, 19-31 and 34-45 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The Office Action states that a "computer-readable medium" or a "computer arrangement" does not provide a definite tangible result. Applicant has amended Claims 16 and 27 to recite, "A tangible computer-readable medium having an application including computer-executable instructions..." Applicant has amended Claims 31 and 42 to recite, "A computer system comprising a processor that is arranged to execute computer-executable instructions..." Thus, Claims 16, 27, 31 and 42, as amended, are each directed to statutory subject matter because a definite tangible result is provided. Furthermore, dependent Claims 19-26, 28-30, 34-41 and 43-45 are allowable for at least the same reasons that the base claims on which they rely are allowable, and notice to that effect is solicited.

App. No. 09/560,269
Amendment dated August 31, 2005
Reply to final Office Action of July 14, 2005

Rejections under 35 U.S.C. § 103(a)

Claims 1, 10-12, 16, 25-27, 31 and 40-42 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,314,558 issued to *Angel* in view of "Compilers: Principles, Techniques, and Tools" by *Aho* and further in view of U.S. Patent No. 5,539,907 issued to *Srivastava*. Claims 4, 6, 19, 21, 34 and 36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Angel*, *Aho*, and *Srivastava* in view of U.S. Patent No. 6,332,213 issued to *Grossman*. Claims 5, 7, 13, 14, 20, 22, 28, 29, 35, 37, 43 and 44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Angel*, *Aho*, *Srivastava* and *Grossman* in view of U.S. Patent No. 6,282,701 issued to *Whygodny*, U.S. Patent No. 6,438,512 issued to *Miller*, and U.S. Patent No. 6,374,369 issued to *O'Donnell*. Claims 8, 23 and 38 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Angel*, *Aho* and *Srivastava* in view of U.S. Patent No. 5,761,513 issued to *Yellin*. Claims 9, 15, 24, 30, 39 and 45 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Angel*, *Aho*, *Srivastava* and *Yellin* and further in view of *Whygodny*, *Miller*, and *O'Donnell*. Applicant respectfully traverses this rejection. Neither *Angel*, *Aho*, *Srivastava*, *Grossman*, *Yellin*, *Whygodny*, *Miller*, *O'Donnell*, nor any combination thereof, teach all of the features recited in Applicant's claims as amended.

The Office Action rejected independent Claim 1 by citing a procedure described in *Angel* for instrumenting a byte code computer program, a procedure described in *Aho* for code optimization, and a procedure in *Srivastava* for link time optimization. Claim 1 recites, "determining a set of probe locations in the application, wherein the set of probe locations comprises a probe location pair that produces redundant information; eliminating one member of the probe location pair, wherein the eliminated member comprises one of: a call to function probe location in a calling function when the calling function calls to a called function, wherein the called function is within a current module of the calling function, and a return from function probe location in the calling function when the calling function calls to the called function, wherein the called function is within the current module of the calling function; and inserting probes at the remaining probe locations in the application such that data collected relating to the execution of the application produces non-redundant information." The method taught by Claim 1 is different from the procedures in *Angel*, *Aho* and *Srivastava* cited by the Office Action.

App. No. 09/560,269
Amendment dated August 31, 2005
Reply to final Office Action of July 14, 2005

The procedure in *Angel* is directed to examining byte code, selecting portions of the byte code for instrumentation, and instrumenting the portions to provide instrumented byte code. The procedure in *Aho* is directed to optimizing code outside of a compiler. The procedure in *Srivastava* is directed to moving loop-invariant code to a predecessor procedure during execution. However, neither *Angel*, *Aho*, *Srivastava* nor any combination thereof teach anything about "eliminating one member of the probe location pair, wherein the eliminated member comprises one of: a call to function probe location in a calling function when the calling function calls to a called function, wherein the called function is within a current module of the calling function, and a return from function probe location in the calling function when the calling function calls to the called function, wherein the called function is within the current module of the calling function," as recited in Applicant's amended Claim 1. Applicant respectfully submits that the rejection of Claim 1 is overcome and requests that the rejection be withdrawn.

Claims 12, 16, 27, 31 and 42, include limitations substantially similar (albeit different in other important ways) to the limitations claimed in the currently amended Claim 1. As discussed above, Claim 1 is allowable. Thus, Claims 12, 16, 27, 31 and 42 are allowable for at least the same reasons that Claim 1 is allowable, and notice to that effect is solicited.

Furthermore, dependent Claims 4-11, 13-15, 19-26, 28-30, 34-41 and 43-45 are allowable for at least the same reasons that the base claims on which they rely are allowable, and notice to that effect is solicited.

App. No. 09/560,269
Amendment dated August 31, 2005
Reply to final Office Action of July 14, 2005

CONCLUSION

In view of the foregoing amendments and remarks, all pending claims are believed to be allowable and the application is in condition for allowance. Therefore, a Notice of Allowance is respectfully requested. Should the Examiner have any further issues regarding this application, the Examiner is requested to contact the undersigned attorney for the applicant at the telephone number provided below.

Respectfully submitted,

MERCHANT & GOULD P.C.



John J. Farrell

Registration No. 57,291

Direct Dial: 206.342.6261

MERCHANT & GOULD P.C.
P. O. Box 2903
Minneapolis, Minnesota 55402-0903
206.342.6200
[JJF/ab]

27488

PATENT TRADEMARK OFFICE